

Supreme Court, U.S.
FILED

05-687 SEP 22 2005

No.

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA

October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin;
Matthew J. Capstraw; Norman D. Levin, Professional
Association (P.A.); Carol Grant; Marc Kurzman; Kurzman,
Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg;
Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A.
Adams; Dr. Daniel Tressler; Nancy DeLong, and William
Johnson

Respondents

**On Petition for a Writ of
Certiorari to the 11th Circuit Court of Appeals**

PETITION FOR A WRIT OF CERTIORARI
PURSUANT TO SUPREME COURT RULE 10 WHERE
THE COURT HAS SO FAR DEVIATED FROM THE
ACCEPTED AND USUAL COURSE OF JUDICIAL
PROCEEDINGS AND SANCTIONED SUCH
DEPARTURE BY THE DISTRICT COURT AS TO
CALL FOR AN EXERCISE OF THIS COURT'S
SUPERVISORY POWER

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 32789
Tel. 507-581-0277

QUESTIONS PRESENTED FOR REVIEW

Does the 18 U. S. C. 1962 and 1964 Congressional mandate of subject matter jurisdiction require a District Court to provide the exclusive forum for remedies for RICO victims harmed by RICO agreements and verified action of RICO litigants and RICO officers of the courts who, for profit, use the U. S. Postal Service and interstate wires to defraud judges to procure state or federal judicial orders by deceit?

Does the United States District Court have subject matter jurisdiction pursuant to 42 U. S. C. 1983 for civil rights violations by licensed attorneys operating under color of law as officers of courts for intentional, malicious and willful depravation of Constitutional Rights guaranteed under the 1st, 5th and 9th Amendments to the United States Constitution?

Should the attorney-client privilege any longer be a protective shield for any client or an attorney after the attorney-officer of the court has deliberately presented false sworn documents using the United States Postal Service and the interstate wires to deceive any judge to procure court's order by fraud?

Must each officer of the court, to fulfill their own duty to the court, self report their own and any other officers' illegal use of the U. S. Postal Service mail and interstate wires to defraud any judge to procure judicial orders by deliberate deceit so as to protect the real integrity of the courts and the court's perceived ability to deliver proper, equal and impartial justice?

Are courts orders valid when procured, for money, by officers of the courts' unlawful misconduct in violation of the RICO, mail and wire fraud United States Criminal Code statutes 18 USC 1962, 18 USC 1341 and 18 USC 1343, respectively?

Rule 14 (b) Disclosure

The parties are properly listed in the caption. The Petitioner is not a non-governmental corporation and there is no requirement for a Rule 29 (b) disclosure. The Petitioner is pro se after:

- A. Having spent amounts for legal fees exceeding \$342,000.00;
- B. Being targeted for unlawful wire and mail fraud and RICO misconduct in Minnesota, California and Florida;
- C. Becoming indigent from the RICO misconduct and in defending her 3 ½ year old son also targeted, for profit, by officers of the courts for RICO harm;
- D. Being told, by a still avoiding service of process California judge in Kern County, California [where there is an ongoing unrelated FBI investigation of the Superior Court] that when she had an attorney she "could not even speak in court";
- E. She was not able to find any officer of the court either willing, or free from the fear, to disclose the RICO misconduct of their "win at any costs" attorney colleagues.
- F. Filing a very coherent, factually detailed 62 Count, 862 page Amended RICO Complaint disclosing, *by verbatim transcript*, even the use of the interstate wires by a Florida judge whose statements have been totally erased from a Minnesota phone transcript who has been declared by the Florida Supreme Court to be a sitting judge lacking in judicial and personal integrity who procured her judicial seat by confirmed and admitted election fraud who after being informed of the RICO actions by officers of the courts days before the RICO complaint was filed *"ordered"* *Petitioner not to report the obstruction of justice to state or federal law enforcement authorities.* [Appendix Exhibit 1].

TABLE OF CONTENTS – Rule 14 c

Officers of the courts must be pillars of the court and the foundational gatekeepers for the determination of the essential truth upon which judges may make fully informed decisions.

Certainly never again may any officer of our courts become a profiteer as the architect of deceit to destroy the core integrity of our sacred and honored judicial system.

	<u>Page</u>
QUESTIONS PRESENTED.....	i
PARTIES Rule 14 (b).....	ii
TABLE OF CONTENTS Rule 14 (c).....	iii
TABLE OF AUTHORITIES.....	v
OPINION BELOW Rule 14 (d).....	ix
JURISDICTION Rule 14 (e).....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED Rule 14 (e) (iv).....	4
STATEMENT OF THE CASE	5
A. Basis for Federal Jurisdiction in the U. S. District Court.....	5
B. Facts Material to the Issues Presented.....	6
C. Argument.....	14
D. Policy Grounds for Review.....	28
E. Conclusion.....	29

APPENDIX

Exhibit 1	Florida State Supreme Court Decision In Re: Nancy Alley.....	I
Exhibit 2	March 8, 2005 District Court Order.. dismissing RICO action	II
Exhibit 3	Petitioner's Notice of Appeal.....	III
Exhibit 4	U. S. District Court clerk's error in captioning/transmittal of Record...	IV
Exhibit 5	May 10, 2005 <i>sua sponte</i> 11th Circuit Court of Appeals Order.....	V
Exhibit 6	Rule 40 Petition for rehearing.....	VI
Exhibit 7	June 27, 2005 11th Circuit Court Of Appeals Order.....	VII

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTIONAL PROVISIONS

	<u>Page</u>
1 st Amendment to the Constitution of the United States of America.....	5,10,23,26
5 th Amendment to the Constitution of the United States of America.....	5, 9, 23, 26
9 th Amendment to the Constitution of the United States of America.....	5,10,23,26
14 th Amendment to the Constitution of the United States of America.....	23,25,26
Each Court So Far Has Failed to Consider the Constitutional Issues Raised by the Petitioner	

UNITED STATES STATUTORY PROVISIONS

18 USC 1341 – Mail Fraud.....	1,15
18 USC 1343 – Interstate Wire Fraud.....	1,15,16
18 USC 1962 and 1964 RICO Claims and Jurisdiction.....	1,3,4,5,6,14,22,26
<u>Organized Crime Control Act of 1970</u>	
Public Law No. 91-452, Tit. IX, 84 Stat. 941 (1970)	19
42 U. S. C. 1983	
Civil Rights Claim.....	26

UNITED STATES SUPREME COURT DECISIONS

Bivens v. 6 unknown named federal agents 403 U. S. 388, 91 SCT 1999 (1971).....	5,23,28
Elrod v. Burns 427 U. S. 347; 96 S. C. 2673 (1976).....	24,26,27
Leh v. General Petroleum Corp. 382 U. S. 59 (1965).....	21
May v. Anderson 345 U. S. 528 (533); 73 S. C. 840, 843 (1952).....	24
Minnesota Mining & Mfg. Co. v. New Jersey Wood Furnishing Co. 381 U. S. 311 (1965).....	21
Merrill Dow Pharmaceuticals, Inc. v. Thompson 478 U. S. 804, 106 S. Ct. 3229, 92 L. Ed. 2d 650 (1986)	21
Meyer v. Nebraska 262 U. S. 390 (1923).....	24,25
Santosky v. Kramer 455 U. S. 745, 102 S. Ct. 1388 (1982).....	25
Sedima, S.P.R.L. v. Imrex Company, Inc. 473 U. S. 479 (1985).....	14,20,21
Stanley v. Illinois 405 U. S. 645, 651; 92 S. C. 1208, (1972).....	24
Washington V. Glucksberg 521 U. S. 702, 719 (1997).....	27

Wisconsin v. Yoder, 406 U. S. 205, 237 (1972).....	25
--	----

Yick Wo v. Hopkins 118 U. S. 356 (1886).....	23
--	----

UNITED STATES COURT OF APPEALS DECISIONS

Alcorn County v. U. S. Interstate Suppliers, Inc. 781 F. 2d 1160, (5 th Cir. 1984).....	20
--	----

Franz v. U. S. 707 F. 2d 582, 595-599 (U. S. C. A. 1983).....	26
---	----

Handeen v. Lemaire 112 F. 3d 1339 (8 th Cir. 1997).....	3,16,22
--	---------

In re Universal Minerals, Inc. 755 F. 2d 309, 313 (3d Cir. 1985).....	18
---	----

Leipzig v. AIG Life Insurance Co. 362 F. 3d 406, 410 (7 th Cir. 2004).....	21
---	----

Malauttea v. Suzuki Motor Co. 987 F. 2d 1536, 1537 (11 th Cir. 1993).....	3,18
--	------

Plains Resources Inc. v. Gable 782 F. 2d 883, 886 (10 th Cir. 1986).....	21
---	----

United States v. Long 651 F. 2d 239, 241 (4 th Cir.) cert. denied, 454 U. S. 896 (1981).....	20
--	----

United States v. Ross 131 F. 3d 970, (11 th Cir. 1997).....	16
--	----

UNITED STATES DISTRICT COURT DECISIONS

Carson v. Elrod	
411 F. Supp. 645, 649; DC E.D. Va (1976).....	22, 26, 27
Doe v. Irwin	
440 F. Supp. 1247; DC. Mi (1985).....	26
Langton v. Maloney	
527 F. Supp. 538, D. C. Conn. (1981).....	27

FLORIDA SUPREME COURT DECISION

Inquiry concerning a Judge	
Re: Nancy F. Alley	
Florida Supreme Court	
Case No., 97-01 [October 7, 1997].....	9
As Appendix Exhibit 1.....	I

BAR JOURNALS

83 A. B. A. J. at 95.....	18
---------------------------	----

RULE 14 (d) CITATIONS

The Order entered in the case by the United States District Court for the Middle District of Florida and the 2 Orders entered by the 11th Circuit Court of Appeals are contained in the Appendix as Exhibits 2, 5 and 7.

March 8, 2005 – Two Part Order, Final as to RICO Defendants and Not Final as to Fraud Allegations against Kurzman-Grant

The United States District Court for the Middle District of Florida entered its Final Order dated March 8, 2005, involving all captioned Defendants, that it did not have subject matter jurisdiction over a Sixty-One Count 862 page RICO and Civil Rights Complaint. [Appendix Exhibit 2].

However, in the Final Order of March 8, 2005, the United States District Court did also grant Rachel Braaten leave to file a complaint for fraud against Marc Kurzman, a leader of NORML and his wife and law partner Carol Grant and their law firm without explaining why their mail and wire fraud is not RICO in nature since the United States Postal Service and the interstate fax were used by Kurzman-Grant and the named defendants to deceive courts, by agreement and for profit. [Non-final part of Appendix Exhibit 2 and not appealed by the Petitioner to the 11th Circuit Court of Appeals].

Pursuant to the limited leave of court granted by the non-final part of the Order of March 8, 2005, Rachel Braaten as Plaintiff and Kurzman-Grant as Defendants are at issue in the United States District Court on the underlying fraud issues.

April 1, 2005 - District Court Clerk's Error – Transmits case captioned as to the surviving parties and omits the RICO Defendants from review by the 11th Circuit Court of Appeals

Although all captioned Defendants were dismissed as to the RICO claims of the Petitioner, somehow the United State's District Court Clerk's office sent the Notice of Appeal to the 11th Circuit United States Court of Appeals as appealed just on the Kurzman-Grant matters rather than on the RICO subject matter jurisdiction issues. [Appendix Exhibits 3 and 4].

May 10, 2005 – 11th Circuit Rules sua sponte and misled by the District Court Clerk's Error of April 1, 2005

On May 10, 2005, the 11th Circuit Court of Appeals *sua sponte and based on the District Court Clerk's error*, dismissed the Appeal of the Petitioner without even considering the substantial RICO subject matter jurisdiction issues relating to officers of the courts using the mail and interstate wires to defraud and deceive judges to procure orders by fraud. [Appendix Exhibit 5].

Rachel Braaten then timely petitioned the 11th Circuit Court of Appeals for reconsideration. [Appendix Exhibit 6].

June 13, 2005 – 11th Circuit Rules while still misled by the District Court Clerk's Error of April 1, 2005

On June 13, 2005, the 11th Circuit Court of Appeals denied the timely filed Fed. R. Civ. Pro 40 Petition for Reconsideration thereby perfecting Petitioner's right to Petition this court concerning the troublesome issues of whether officers of the courts using the United States mail and interstate wires, for profit, are immune from RICO claims when they agree to deceive our sacred courts to mislead judges to procure Court's order by fraud. [Appendix Exhibit 7].

RULE 14 (e) JURISDICTION BASIS

Rule 14 e (i) statement. The 11th Circuit Court of Appeals Order was entered on June 27, 2005, affirming that the United States District Court for the Middle District of Florida is not mandated by 18 USC 1964 to exercise subject matter jurisdiction over RICO claims that otherwise factually state a cause of action under the federal wire and mail fraud federal statutes, 18 USC 1343 and 1341.

Rule 14 e (iv) statement. Supreme Court Rule 10 a Exercise of Supervisory Powers. The Supreme Court has supervisory power when the 11th Circuit Court of Appeals has so far departed from the accepted course of judicial proceedings as... has sanctioned such a departure by the U. S. D. C. for the Middle District of Florida.

RICO agreements and enterprises using the U. S. mail and interstate wire that are engineered by officers of the courts to deceive any judge destroy the essential core integrity of the courts upon which our Republic depends to assure equal access to actual justice.